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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections
of the Cable Television Consumer
Protection and Competition
Act of 1992

Rate Regulation

DOCKET FILE COPY ORIGINAL

MM Docket No. 92-266

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rule Making, ("NPRM"), released by the Commission in this docket on December 24, 1992.

In this NPRM, the Commission is seeking comments on rules to implement provisions of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") which concern regulation of rates for cable service and leased commercial access.

NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to interexchange carriers ("IXCs") and subscribers across rural America. Approximately 150 of NTCA's members operate small cable television systems in their telephone service area. Most of them provide service under the rural exemption in 47 C.F.R. § 63.58. Because service is provided in sparsely populated areas the systems are generally not subject to "effective competition."

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DISCUSSION

I. NTCA AGREES WITH THE TENTATIVE CONCLUSION THAT COST-OF-SERVICE REGULATION IS NOT APPROPRIATE FOR CATV.

The Commission tentatively concludes that it should not select cost-of-service regulation as the primary mode of regulation of cable service rates. It observes that cost-of-service regulation imposes high costs on regulators and regulatees and forces companies to devote substantial resources to participate in the regulatory process, burdening them with accounting and reporting requirements. NPRM, ¶ 58.

The Commission's observations are particularly applicable to small companies of the type operated by NTCA members under the rural exemption. Almost all the companies have fewer than 1,000 subscribers and fit into a category Congress was well aware of and concerned about in terms of the effects rate regulation would have on the companies and their subscribers.¹ These companies are more likely to be impacted adversely if they are required to operate under cost-of-service. The Commission itself has said, "There is evidence that small systems tend to have higher costs and to charge lower rates." NPRM, ¶ 131. In this situation, NTCA believes that administratively cumbersome and expensive regulatory procedures will defeat rather than promote the statutory policy of protecting consumers from unreasonable rates. Thus NTCA urges the Commission to adopt simplified alternatives to regulate rates.

¹ See, Section 623 (i) discussed in Point II.

The legislative history of the Act evinces a congressional intent that the Commission promote this goal while accounting for the differences between system size and geographic area in its formulation of a regulatory scheme to address rate regulation. For example the Senate Committee on Commerce, Science, and Transportation Report, remarking on the degree of oversight needed to cure "market power problems" in the cable industry states:

The Committee thus is taking steps to encourage competition and to rely on some greater governmental oversight of the cable industry where no competition exists. Such oversight should be the minimum necessary to rein in this market power. It should also reflect the unique nature of the cable industry and the fact that the extent of this market power varies from locality to locality. [Emphasis added]

S. REP. No. 92, 102d Cong., 1st Sess. 19 (1992).

Cost-of-service regulation is not minimum oversight. It would require intensive and resource consuming efforts by franchising authorities. In NTCA's view, there is no stated congressional intent to improve this type of regulation and the Commission should therefore reject it.

II. THE COMMISSION CAN BEST ACCOMMODATE THE CONGRESSIONAL GOAL OF REDUCING BURDENS FOR SMALL COMPANIES BY PERMITTING NEGOTIATED RATES.

The Act specifically provides that the Commission "in developing and prescribing regulations . . . [under Section 623, regarding regulation of rates] shall design such regulations to reduce administrative burdens and costs of compliance with such regulations to cable systems that have 1,000 or fewer

subscribers."³ The Commission seeks comments on how to effectuate this statutory requirement and asks whether it should exempt systems of fewer than 1,000 subscribers from certain accounting and data collection requirements. It also seeks comment on whether it should exempt small systems from any substantive or procedural rate regulation requirements. It notes that present rules exempt small systems from network duplication protection requirements, syndicated exclusivity rules, certain technical standards and performance testing requirements and sports broadcast blackout rules. NPRM, ¶ 130.

NTCA agrees that small systems should be exempt from burdensome accounting and data collection requirements. It also believes that Section 623 (b) and (i) gives the Commission the authority to exempt small systems from substantive and procedural rate regulation rules. The Commission seeks comments on whether it should establish a presumption that systems with under 1,000 subscribers are "unlikely to be earning returns or charging rates that could effectively be altered to the benefit of subscribers through detailed regulatory oversight." NPRM, ¶ 131. The Commission proposes that a small system would be deemed to be in compliance under this approach until a franchising authority, (in the case of basic service rates) a subscriber or other interested party (in the case of cable programming service rates) affirmatively demonstrated that the systems's rates were unreasonably high. NTCA appreciates the Commission's objective

³ Section 623 (i).

behind this proposal but the proposal is troublesome because it contemplates the use of presumptions and administrative procedures which are likely to entail overly burdensome costs for the Commission, small systems and complaining parties.⁴ NTCA believes a blanket exemption can best achieve the objective of the Act.

The Commission's obligation to subscribers under Section 623 (b) is to "ensure that the rates for the basic tier are reasonable." Under Section 623 (i), the Commission's obligation is to reduce administrative burdens on small systems. Under Section 623 (b) (2) (A), the Commission in promulgating regulations to ensure reasonable rates, "shall seek to reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission." These provisions give the Commission the authority to promulgate a rule that would provide systems with fewer than 1,000 subscribers and systems operated under the rural exemption a blanket exemption from the options proposed by the Commission and designed for large systems or multiple system operators. The Commission could promulgate such a rule based on its assessment that the methods it proposes and the options it finally adopts would not achieve the

⁴ The conferees expressed a clear aversion for procedures of this type that would complicate rate regulation and possibly require attorneys to be effective. They stated: "The intention of the conferees is to allow consumers to simplify the process of filing complaints concerning unreasonable rates as to require subscribers to retain the services of a lawyer to file a complaint and obtain Commission consideration of the reasonableness of the rate in question." H.R. REP. No. 862, 102d Cong., 2nd Sess. 64 (1992).

overriding congressional purpose of the Act or benefit the subscribers of small systems who are the consumers the Act is intended to benefit.

Alternatively, NTCA suggests that the Commission consider adopting procedures specifically designed to reduce the burdens on small systems as it is mandated to do by Section 623 (i), while at the same time reducing the administrative burdens for subscribers, franchising authorities and the Commission pursuant to Section 623 (b) (2) (A). This alternative conforms to the Commission's request for comments on proposals to "tailor" its rate regulations to small companies. NPRM, ¶ 131. NTCA's specific proposal is that the Commission exempt small systems with fewer than 1,000 subscribers from whichever of the options it adopts and allow these systems either to simply file their basic service tier rates (in cases where there is no objection to simple filing by the franchising authority) or to negotiate rates with the franchising authorities for the basic service tier. In NTCA's view, a regulatory procedure which permits franchise authority acceptance of filed rates or of negotiated rates approved by the franchising authorities is capable of conforming to Section 623 (b) (2) (B)'s directive that the Commission "may adopt formulas or other mechanisms and procedures " to comply with the obligation in Section 623 (b)(2)(A) that it "shall ...reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission." Consumers can be adequately protected with a scheme that allows

for the publication of rates or the use of rates arrived at through negotiations with franchisors if the Commission also adopts guidelines for simplified complaint and dispute resolution procedures.

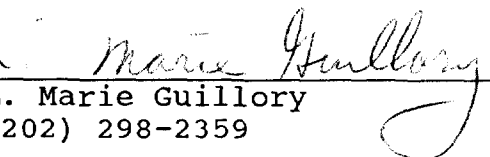
CONCLUSION

For the above stated reasons, NTCA agrees with the Commission's tentative conclusion not to adopt cost-of-service regulation. NTCA also urges the Commission to exempt small systems with fewer than 1,000 subscribers from rate regulation, or in the alternative, to permit franchising authorities to accept filed basic service tier rate proposals or negotiated rate agreements with these small systems.

Respectfully submitted,

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January 27, 1993

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in MM Docket No. 92-266 was served on this 27th day of January 1993 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list.

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